

IN THE SUPREME COURT OF IOWA

NO. 19-1674

LUCAS COUNTY NO. CVCV033187

CURT N. DANIELS and INDIAN CREEK CORPORATION,
Plaintiffs—Appellants

vs.

JOHN HOLTZ PERSONALLY AND JOHN HOLTZ, d/b/a WSH
PROPERTIES, LLC, HUNTERS RETREAT, LLC, and NAVAJO
ASSOCIATES, LLC
Defendants—Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR LUCAS COUNTY, IOWA

HONORABLE JOHN D. LLOYD, DISTRICT COURT JUDGE

**DEFENDANTS-APPELLEES' APPLICATION FOR FURTHER
REVIEW OF THE IOWA COURT OF APPEALS DECISION OF
NOVEMBER 4, 2020**

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DEFENDANTS— APPELLEES

QUESTION PRESENTED FOR REVIEW

Did the trial court properly take judicial notice of prior Iowa Supreme Court and Court of Appeals orders affirming trial court rulings dismissing Daniels' eight prior petitions against Holtz in entering its August 16, 2019 order dismissing Daniels' (ninth) petition against Holtz?

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STATEMENT SUPPORTING FURTHER REVIEW

The Court of Appeals decision provides that the trial court erred in taking judicial notice of prior orders of the Iowa Supreme Court, Iowa Court of Appeals, and Lucas County District Court in the prior eight lawsuit brought by Daniels against Holtz involving the same parties and same transaction. The Court of Appeals has entered a decision in conflict with multiple decisions of the Iowa Supreme Court and Court of Appeals in an important matter that has spanned over a decade. On eight prior occasions the trial court has ruled in favor of Holtz dismissing Daniels' groundless petitions. All dismissals have been affirmed on appeal.

This is an appeal by Daniels from an August 16, 2019 dismissal by the Lucas County District Court dismissing his (ninth) Petition against Holtz. Every issue raised by Daniels in this proceeding has already (and repeatedly) been decided by the Lucas County District Court and affirmed by Iowa Supreme Court or Iowa Court of Appeals.

The Iowa Courts, the United States District Court for Iowa, the Eighth Circuit Court of Appeals, and the United States Supreme Court have repeatedly

denied Curt Daniels the relief requested in his newest (*ninth*) Petition pending on appeal before this Court.¹

The subject of this appeal is the trial court's Order entered August 16, 2019. In the Order, the district ruled that "defendant's motion to dismiss is sustained for all of the reasons set out in it." The district court also correctly noted that all claims are long barred by the statute of limitations.

Daniels' wasteful and repetitive exploitation of judicial resources devoted to improper attempts to repeatedly have the same issue be redetermined cannot be understated. Daniels requests that this Court again entertain this case in order to overrule the following final Orders:

- Second Action (Lucas County Case No. LACV031411): The Iowa District Court July 14, 2014 Order & Ruling on Posttrial Motion ("The remedies of constructive trust, unjust enrichment, and restitution now sought by the plaintiff in his present filings either were brought before the Court and rejected, or were not brought before the Court in a timely manner and thus must be rejected.")

¹ Daniels has initiated 18 appeals as appellant against John Holtz and his related entities. This appeal is Daniels' 19th appeal.

- The Iowa Court of Appeals (Case No. 14-1290) April 6, 2016 affirmance of the July 14, 2014 Order & Ruling on Posttrial Motion: “The relief Daniels sought in the second suit is the same relief Daniels sought in the original action, we conclude claim preclusion barred the second suit.... Daniels urged the district court to impose ‘a constructive trust upon Holtz in his post sheriff sale dealings with ICC[.]’”)
- The Iowa Supreme Court (en banc) June 2, 2016 denial of Daniels’ Petition for Review (Case No. 14-1290).
- The United States Supreme Court June 9, 2017 denial of Daniels’ Petition for Writ of Certiorari.
- Third Action (Lucas County Case No. EQCV032842): The District Court April 5, 2017 dismissal of Daniels’ Third Petition (“As Defendants correctly noted, for a third time Plaintiffs are requesting relief identical to that requested and denied twice before[.] Plaintiffs’ request to overrule the appellate court decision defies explanation.”)
- The Iowa Supreme Court (Case No. 17-0721) June 9, 2017 Order denying Daniels’ Petition for Writ of Certiorari.

- Fourth Action (Lucas County Case No. EQCV032960): The District Court January 4, 2018 Order dismissing Daniels' Fourth Petition ("Plaintiffs, essentially, admit the issues raised in the petition have been raised before in one form or another and the decision of prior judges have been affirmed on appeal.")
- The Iowa Supreme Court (Case No. 18-0201) April 6, 2018 Order dismissing Daniels' appeal.
- Fifth Action (Lucas County Case No. LACV031411): The District Court March 16, 2018 Order denying Daniels' Motion to Vacate Judgment.
- Sixth Action (Lucas County Case No. CVCV030881): The District Court March 16, 2018 Order denying Daniels' Motion to Vacate Judgment.
- Seventh Action (United States District Court Southern District of Iowa Case No. 4:18-CV-00168): The United States District Court dismissed plaintiffs' complaint in its February 8, 2019 Order on Motion to Dismiss: "Plaintiffs are currently requesting the identical relief they requested ... numerous times

in the state court proceedings. Thus, Plaintiffs are losers to the extent they are pursuing these same remedies in federal court.”

- The Eighth Circuit Court of Appeals (Case No. 19-1461) affirmed the Iowa District Court’s dismissal on April 16, 2019.

- Eighth Action (Lucas County Case No. CVCV033079) - On November 25, 2018, the Iowa District Court dismissed Daniel’s (eighth) Petition in Case No. CVCV033079 stating:

In order to fully understand and appreciate Defendants’ Motion to Dismiss and Plaintiffs’ Resistance thereto, the court has reviewed each of the rulings and documents addressed herein. Based upon that review, the court finds Daniels, who is an attorney, has continued to file motions and complaints against Defendants based upon rejected legal propositions. He has continued to advocate positions against Holtz that have been found unsound. As noted above, both the District Court and the Supreme Court ordered Daniels to cease filing documents in two previous related cases between the parties, and the Supreme Court publicly reprimanded him for frivolous filings in a third. Yet Daniels continues.

Daniels’ failure to make proper inquiry into the law regarding the present case has caused needless litigation costs for the Defendants and has been wasteful of judicial resources. The court finds Defendants’ request for sanctions is appropriate to prevent further misuse of the judicial system.

ORDERS:

Based upon the foregoing, Defendants’ Motion to Dismiss is GRANTED for failure to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED as and for sanctions, that Curt N. Daniels is enjoined from filing any new actions or filings, other than a notice of appeal from this ruling, arising out of or related to the facts or subject matter of this case or previous litigation between the parties to this action.

A copy of the Court's Order entered November 25, 2018 is attached as Exhibit A to Holtz' Motion to Dismiss filed with the trial court (emphasis supplied). Daniels appealed the Court's Order dismissing his (eighth) Petition and entering the sanction enjoining any further filing. On March 18, 2019, the Iowa Supreme Court dismissed Daniels' appeal at Case No. 19-0078.

Daniels has been repeatedly sanctioned and ordered to cease his frivolous filings. For example, a decade ago, the Honorable John D. Lloyd admonished Daniels regarding his filings in this case:

Like the Energizer bunny, Mr. Daniels seems never to run out of filings in a suit that was tried to a jury over five years ago. Unlike the Energizer Bunny, Mr. Daniels efforts have passed the point of being cute and have entered the realm of abuse of the legal system.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Curt N. Daniels, whether acting for himself or as a licensed attorney, is barred from filing any new actions, in this court or anywhere else, arising out of or relating to the facts or subject matter of this action.

Ruling on Petition for Relief entered January 20, 2010 attached as Exhibit B to Holtz' Motion to Dismiss filed with the trial court.

Six years ago the Iowa Supreme Court disciplined Daniels for his frivolous filing against Holtz:

This discipline should serve to remind Daniels of his professional obligation to refrain from filing frivolous matters and to protect the integrity of the profession[.]

We publicly reprimand Curt N. Daniels for asserting a frivolous claim in the course of litigation.

Iowa Supreme Court Attorney Disciplinary Board v. Daniels, Case No. 13-0397 (October 25, 2013) attached as Exhibit C to Holtz' Motion to Dismiss filed with the trial court.

Over a year ago, the Iowa Supreme Court entered its Order that "Daniels is directed to file no additional filings in this case." A copy of the Iowa Supreme Court's April 26, 2018 Order is attached as Exhibit D to Holtz' Motion to Dismiss filed with the trial court.

ARGUMENT

I. THE DISTRICT COURT PROPERLY DISMISSED DANIELS' PETITION FOR RELIEF AS IT HAS DONE ON SEVERAL PRIOR OCCASSIONS WHICH WAS AFFIRMED BY THE IOWA SUPREME COURT.

"When a court is acting within its jurisdiction it always has the inherent authority to do what is reasonably necessary for the administration of justice in a case before the court." *Schwennen v. Abell*, 471 N.W.2d 880, 884 (Iowa 1991); *State v. Iowa Dist. Court for Johnson County*, 750 N.W.2d 531, 534 (Iowa 2008). It is proper for the trial court to take judicial notice of its own orders and records. *Bunting v. Powers*, 144 Iowa 65, 66, 120 N.W. 679, 679 (1909) (court

took judicial notice of injunction order previously entered by the same court). In matters involving contempt, the court may take judicial notice of its own orders in the matter out of which the alleged contempt grew. *Jordan v. Circuit Court of Wapello Cty.*, 69 Iowa 177, 181, 28 N.W. 548, 550 (1886). Indeed, Daniels refers to prior proceedings in his petitions and filings thereby inviting the court to take judicial notice of those proceedings.

The Iowa Supreme Court has held several times that “courts will take judicial notice of prior proceedings, orders, judgments and decrees in the same case without the necessity of any formal offer or physical production of the record in evidence, this rule being especially applicable where the object or purpose of the proceedings is to enforce a judgment or decree entered in the case.” *Britven v. Britven*, 259 Iowa 650, 659, 145 N.W.2d 450, 455-56 (1966) citing *In re Estate of Hinkle*, 240 Iowa 979, 982, 38 N.W.2d 648; *Slater v. Roche*, 148 Iowa 413, 417, 418, 126 N.W. 925; *Haaren v. Mould*, 144 Iowa 296, 301, 122 N.W. 921; 31 C. J. S., Evidence, section 50(2), page 1022; and 20 Am. Jur., Evidence, section 86, page 104.

Further, Iowa law provides that counsel's signature to every pleading:

shall be deemed a certificate that ... to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, *such as to harass or cause an unnecessary delay*

or needless increase in the cost of litigation[.] If a motion, pleading, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it ...an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the motion, pleading, or other paper, including a reasonable attorney fee.

Iowa Court Rule 1.413.

Iowa Supreme Court Justice Mark S. Cady emphasized the importance of the proper application of the Rule 1.413:

Attorneys are obliged to conform to a standard of conduct in filing documents with the court, while courts are mandated to detect and punish offenders[.] The rule specifically includes harassment, unnecessary delay and a needless increase of litigation costs as an ‘improper purpose[.]’ *Filing successive complaints based on rejected legal propositions could, however, translate into harassment[.]* The court is often the forgotten victim of a party's harassing conduct. The ‘improper purpose’ clause seeks to eliminate tactics that divert attention from the relevant issues, waste time and serve to trivialize the adjudicatory process. A harassing claim deprives the court of desperately needed time to hear legitimate complaints and results in greater costs to the taxpayers[.] *The rule should be applied once an attorney continues to advocate a position which has been found unsound[.]* Attorneys are more than zealous advocates for their clients; they are officers of the court and their first duty is to the administration of justice[.] Although reasonable attorneys may disagree on whether a claim is deserving of litigation, the duty to refrain from bringing a meritless claim, and to make a reasonable inquiry before instigating an action, is clear and unambiguous in all cases[.] *The final and perhaps most important duty imposed by the rule is upon the courts to detect and punish violators. If this responsibility is not closely guarded, misuse of the judicial system will multiply[.]* While courts are given discretion in deciding whether an attorney has breached their obligations under the rule, once the determination is made that a violation has occurred that discretion is lost. *The language of the*

rule makes sanctions mandatory[.] Courts have discretion to tailor sanctions according to the nature of the violation[.] Nevertheless, while due process guides the imposition of sanctions, it does not mandate a pre-sanction hearing[.] Where the sanctions are based on the failure to make a proper inquiry into the facts or law and the judge assessing the sanctions participated in the proceedings, no formal pre-sanction hearing is required. Under such circumstances, there is no real necessity for a hearing because the violation is judged on an objective standard, not the subjective belief of the offending lawyer[.] If an attorney has been given a full opportunity to present the facts and law to support a claim and the judge has gained a full understanding of the relevant facts by participating in the proceeding, further inquiry into the matter would be futile.

CURBING LITIGATION ABUSE AND MISUSE: A JUDICIAL APPROACH,

Mark S. Cady, 36 Drake L. Rev. 483, 490-505 (1986)(emphasis added).

All levels of the Iowa Courts have been repeatedly subjected to Daniels' abusive, wasteful, and groundless filings. Countless hours of judicial resources have been expended, at taxpayer expense, resolving again and again *ad nauseum* the same arguments, claims, and issues for well over a decade.

Daniels' filings against Holtz have been described by all levels of Iowa Courts as frivolous, unprofessional, and abusive. Daniels has been repeatedly sanctioned and disciplined by the Iowa Supreme Court. Daniels has been ordered by the Iowa District Court and the Iowa Supreme Court to cease any further filings against defendants. Nonetheless, Daniels continues undeterred and in complete defiance of the Iowa Courts at all levels.

The Court of Appeals Order reversing the trial court is contrary to the Orders of this Court.

Holtz respectfully requests that this Court affirm the Order of the trial court dismissing Daniels' (ninth) action against Holtz and enter such other orders as appropriate.

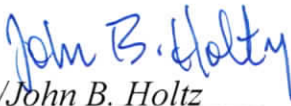
Respectfully submitted,


/s/ John Holtz

John B. Holtz
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Telephone: 602-266-7766

CERTIFICATE OF FILING

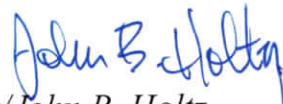
I hereby certify that I have filed the attached DEFENDANTS—APPELLEES’ PETITION FOR FURTHER REVIEW OF THE IOWA COURT OF APPEALS DECISION OF NOVEMBER 4, 2020 with the Iowa Supreme Court on the 20TH day of November, 2020.


/s/John B. Holtz
John B. Holtz

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of November, 2020, I served the attached DEFENDANTS-APPELLEES’ PETITION FOR FURTHER REVIEW OF THE IOWA COURT OF APPEALS DECISION OF NOVEMBER 4, 2020 on all parties to this proceeding by mailing one (1) copy thereof to the following named attorneys for said parties at the addresses set forth below:

Curt Daniels
P.O. Box 701
Chariton, IA 50049


/s/John B. Holtz
John B. Holtz

CERTIFICATE OF COMPLIANCE

This application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because this application has been prepared in a proportionally spaced typeface using Times New Roman in 14 point font and contains 2,370 words, excluding the parts of the application exempted by Iowa R. App. P. 6.1103(4)(a).

/s/John B. Holtz
John B. Holtz

November 20, 2020

ADDENDUM

**COURT OF APPEALS DECISION
FILED NOVEMBER 4, 2020**

IN THE COURT OF APPEALS OF IOWA

No. 19-1674
Filed November 4, 2020

CURTIS N. DANIELS and INDIAN CREEK CORPORATION,
Plaintiffs-Appellants,

vs.

JOHN HOLTZ, personally and JOHN HOLTZ, d/b/a WSH PROPERTIES, LLC,
HUNTERS RETREAT, LLC and NAVAJO ASSOCIATES, LLC,
Defendants-Appellees.

Appeal from the Iowa District Court for Lucas County, John D. Lloyd, Judge.

Curtis Daniels appeals the district court's grant of the defendants' motion to dismiss. **REVERSED AND REMANDED.**

Curtis Daniels, Chariton, self-represented appellant.

John B. Holtz, Phoenix, Arizona, self-represented appellee.

Considered by Doyle, P.J., and Mullins and Greer, JJ.

MULLINS, Judge.

In 2007, Curtis Daniels filed suit against John Holtz and others seeking to set aside a sheriff's sale of real property, "alleging a variety of claims including conspiracy, fraud, denial of equal treatment, unjust enrichment, intimidation, slander, and abuse of process." *Daniels v. Holtz*, 794 N.W.2d 813, 817 (Iowa 2010). The defendants moved for summary judgment, and "Daniels moved to amend his petition to add nine causes of action, including deceit and collusion by the parties and their attorneys." *Id.* The motion to amend was denied, and summary judgment was granted in favor of defendants. *Id.* The supreme court remanded for a new trial on the sole issue of "whether Holtz's actions at the sale chilled the bidding and unfairly or fraudulently caused another bidder to cease bidding" and whether the sale should be set aside on that basis. *Id.* at 825.

On remand, "[t]he court concluded Holtz's actions rose 'to the level of the irregularity, unfairness, and fraud described in case law' and were 'sufficient reason to conclude the sale must be set aside.'" *Daniels v. Holtz*, No. 12-1522, 2013 WL 5743640, at *1 (Iowa Ct. App. Oct. 23, 2013). Holtz appealed, and we affirmed. *Id.* at *2.

"After the second appeal became final, Daniels filed a 'motion for court imposition of a constructive trust, order for restitution and request for punitive damages,' alleging:

This instant action is brought to restore to [him] the [corporation] property and property that was owned by [him] personally prior to the . . . sheriff's sale along with all proceeds Holtz deprived [the corporation and him] of receiving post the sheriff's sale and the costs incurred by [him] to recover his property.

Daniels v. Holtz, No. 14-1290, 2016 WL 1366760, at *1 (Iowa Ct. App. Apr. 6, 2016) (alterations in original), *cert. denied* 137 S. Ct. 377 (2016). Holtz resisted, asserting the motion requested the same relief as the 2007 petition, which was already disposed of. *Id.* The district court denied Daniels's motion on res-judicata grounds, reasoning, "The remedies of constructive trust, unjust enrichment, and restitution now sought by the plaintiff in his present filings either were brought before the Court and rejected, or were not brought before the Court in a timely manner and thus must be rejected." *Id.* We affirmed on appeal. *Id.* at *2. We reasoned the issues raised in the motion "were raised before" in the first lawsuit and, although not addressed, "could have been determined." *Id.* Specifically, Daniels had

urged the district court to amend the [remand] ruling to impose "a constructive trust upon Holtz in his post sheriff sale dealings with [Indian Creek Corporation (ICC)], to assure that Holtz is not able to benefit from his fraud." Daniels also asserted, "All of Holtz's activities concerning ICC/Daniels following the sheriff's sale, the ownership transfer(s) of ICC, sale of ICC's personal property, interference with Daniels operation of ICC, extending the sheriff's sale reach to Daniels's residence/homestead, and other activities by Holtz should all be assessed for fairness by the court.

Daniels filed the lawsuit precipitating this appeal in 2019. In his petition, he again seeks the return of property allegedly in the wrongful possession of Holtz as a result of the sheriff's sale being set aside, this time pursuant to Iowa Code chapter 646 (recovery of real property) and 649 (quieting title). He also seeks reimbursement for rent of and damages to the real property occurring during the alleged wrongful possession, as well as damages for conversion of personal property.

The defendants filed a pre-answer motion to dismiss, forwarding allegations concerning Daniels's onslaught of senseless litigation against Holtz, frequent judicial admonishment against the same, and Daniels's failure to heed to said admonishments. The following day, the court entered an order granting the motion to dismiss "for all the reasons set out in it" and on statute-of-limitations grounds, which was not raised in the motion to dismiss. Daniels unsuccessfully moved for reconsideration, and this appeal followed.

Iowa Rule of Civil Procedure 1.421(1) provides the bases for granting a motion to dismiss. We interpret the defendants' motion to request dismissal for "[f]ailure to state a claim upon which any relief may be granted." See Iowa R. Civ. P. 1.421(1)(f). The motion alleged that, in 2018 the district court granted a motion to dismiss in yet another lawsuit by Daniels against Holtz and others and enjoined Daniels "from filing any new actions or filings other than a notice of appeal from this ruling, arising out of or related to the facts or subject matter of this case or previous litigation between the parties to this action." According to the motion, the supreme court dismissed Daniels's ensuing appeal.¹ The implication seems to be that the injunction thus serves as the law of the case for further litigation between the parties.

But the problem with granting a motion to dismiss for failure to state a claim upon which any relief may granted on that basis is that, in ruling on a motion to

¹ The motion also claims a similar admonishment and an attorney disciplinary board proceeding resulting in a public reprimand of Daniels for asserting a frivolous claim against Holtz in the last several years, as well as a supreme court order directing Daniels to submit no additional filings in an appellate case following his petition for rehearing following the issuance of procedendo.

dismiss, courts do not consider factual allegations contained in the motion, *McGill v. Fish*, 790 N.W.2d 113, 116 (Iowa 2010), and “facts not alleged cannot be relied on to aid a motion to dismiss nor may evidence be taken to support it.” *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001) (quoting *Ritz v. Wapello Cnty. Bd. of Supervisors*, 595 N.W.2d 786, 789 (Iowa 1999)). To the extent the district court may have taken judicial notice—without expressly saying so—of prior different proceedings as alleged in the motion to dismiss, that was improper without an agreement of the parties. *Troester v. Sisters of Mercy Health Corp.*, 328 N.W.2d 308, 311 (Iowa 1982).²

The defendants also argued Daniels’s petition should be dismissed because various courts “have repeatedly denied [him] the relief requested in his” petition. To the extent the defendants are again arguing for application of res-judicata principles, we are not persuaded dismissal would be appropriate on that basis either. A large part of the underlying support for that argument is also gleaned from factual allegations outside the petition. While Daniels’s petition details the history of the litigation, all we know is that, following the setting aside of the sheriff’s sale, Daniels sought a constructive trust, damages, and enjoining Holtz from engaging in certain activities, apparently in relation to Holtz’s fraud in prevailing at the sheriff’s sale. Here, Daniels appears to be seeking return of real property and quieting of title following Holtz’s alleged failure to turn over the

² We recognize the allegations in the petition involve the same parties in prior proceedings concerning many of the same allegations, but the petition was filed in a new legal action, not in any of the prior cases.

property following the setting aside of the sheriff's sale, which, for all we know could have occurred after the litigation involving the first two appeals.

Lastly, the court alternatively granted dismissal on statute-of-limitations-grounds. But the statute or statutes of limitations were not specifically asserted in the motion to dismiss. Raising it sua sponte was error. See, e.g., *In re Estate of Terpstra*, No. 17-0893, 2018 WL 2246838, at *2 (Iowa Ct. App. May 16, 2018); *Page v. State*, No. 14-1842, 2016 WL 719243, at *2 (Iowa Ct. App. Feb. 24, 2016); *Reyna v. State*, No. 13-0126, 2014 WL 1234142, at *2 (Iowa Ct. App. Mar. 26, 2014).

On the record before us, properly limited to the allegations contained in the petition, we find no valid basis for dismissing the case at this earliest stage of the proceedings.³ We reverse and remand for further proceedings.

REVERSED AND REMANDED.

³ For the same reasons set forth above, we deny the appellees' motion to dismiss filed in response to the appeal in this case.



State of Iowa Courts

Case Number
19-1674

Case Title
Daniels v. Holtz

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